

SUMMARY OF DECISION OF INVESTIGATION COMMITTEE “B” DR. DONALD HAIGH

Investigation Committee “B” of the College of Physicians and Surgeons of Nova Scotia (the College) concluded its investigation into two complaints against Dr. Donald Haigh by Decision dated November 17, 2015. The Investigation Committee reached agreement with Dr. Haigh with respect to the disposition of the complaints, and a Summary of the complaints and their disposition appears below.

SUMMARY OF BACKGROUND, COMPLAINTS AND RESPONSES

Dr. Donald Haigh is a physician licensed to practice medicine in Nova Scotia. He has been practicing occupational medicine since the early 1980s. His practice is currently entirely in the area of occupational health, including assessment of disability from occupational illness or injury, and assessment of the ability of injured workers to return to work.

First Complaint

The complaint arises from Dr. Haigh's performance of assessments for the Workers' Compensation Board (WCB). Dr. Haigh was given access to the WCB electronic file system, both at their premises and remotely. Dr. Haigh's contract with the WCB included provisions regarding privacy expectations and access to injured worker claim information. The contract also referenced conflicts of interest to ensure Dr. Haigh would not be assigned any associated claim files.

In January 2014, the WCB noticed that Dr. Haigh appeared to have accessed basic personal information within a WCB claim file without authorization. The WCB reviewed all the files Dr. Haigh accessed throughout his two-year contract. Most of Dr. Haigh's accesses were authorized, while some were not.

Dr. Haigh accessed demographic information such as the individual's names, addresses, telephone numbers, and dates of birth; WCB claim numbers; client identification numbers; dates of injury; employer name; nature of injury; claim outcomes; and provincial health card numbers. In some cases, Dr. Haigh also accessed detailed medical reports and summaries of conversations between the WCB and the injured worker. Some of the claim files accessed by Dr. Haigh were included on his conflict of interest list.

A letter of complaint was forwarded to the College from the Workers' Compensation Board. The complaint alleged that Dr. Haigh inappropriately accessed patient files, contrary to expected standards of practice and contrary to his contractual relationship with WCB.

In the response provided by Dr. Donald Haigh he admitted to accessing 17 charts without authorization from the WCB. Dr. Haigh advised he was aware he did not have authorization to access the charts, but believed he was acting for the benefit of the client in each case. Dr. Haigh advised that he had professional relationships with each of the 17 clients involved, and his purpose in each of the accesses was to provide the client and his or her employer with a timely and correct report. Dr. Haigh stated that in his view these accesses were indirectly for the purposes of the WCB, albeit not directly related to the performance of his duties.

WCB identified 6 files in addition to the 17 files acknowledged by Dr. Haigh where access was not authorized by WCB. Dr. Haigh stated that he did not have a professional relationship with the 6 clients identified in these files, and does not believe that he ever knowingly or intentionally accessed these files.

With respect to these 6 files, Dr. Haigh noted that some of the accesses reported by the WCB are recorded as “null”, which provided some confusion. Further, he noted that one of the alleged accesses occurred while he was in a car enroute to Cape Breton. Dr. Haigh repeated that he did not knowingly or intentionally access these files.

Second Complaint

The WCB notified each of the individuals whose files had been accessed by Dr. Haigh. One of these individuals provided a separate letter of complaint expressing concern about Dr. Haigh's access of her file. The Complainant had filed a claim that resulted in a final decision in 2011 from the Workers' Compensation Appeals Tribunal. The Complainant then filed an appeal of that decision to the Nova Scotia Court of Appeal which was later withdrawn. The Complainant understood the claim had been closed since 2012.

Information from the WCB suggested that Dr. Haigh had accessed The Complainant's WCB claim file in 2013, after the file had been closed. The complainant questioned why Dr. Haigh had accessed the file when the file had been closed.

In his response, Dr. Haigh indicated he had no recollection of accessing this file or reading the decision of the Workers' Compensation Appeal Tribunal. This file is one of the 6 files which he says he did not knowingly or intentionally access.

Dr. Haigh advised that after receipt of this complaint he located the WCB decision relating to this individual. On reading this decision, he was astonished to find that a general report that he had written on a medical topic had been tendered as an expert report on this individual's claim, and had been relied upon by the Tribunal. Dr. Haigh stated that he had never been made aware of this. Dr. Haigh indicated it was possible that he had reviewed a document relating to this individual in consultation with a colleague at the WCB.

DECISION

The Committee investigated the concerns set out in the complaints.

Dr. Haigh entered into a contract with the WCB indicating his agreement to abide by all conditions related to privacy and the access of injured worker claim information. The WCB provided Dr. Haigh with privacy and file access training.

In each of the 17 incidents where Dr. Haigh inappropriately accessed information, he was not engaged to conduct permanent medical impairment assessments for those workers on behalf of the WCB.

In addition, Dr. Haigh obtained information from WCB files on injured workers with whom he had a contractual relationship on the part of the injured worker's employer. This represents a conflict of interest that was specifically prohibited by his contract with the WCB.

While Dr. Haigh advised that he accessed these records in the course of his duties, and justified his access by indicating he had the patients' welfare at heart, the Committee was concerned that Dr. Haigh did not appear to have insight into the gravity of his inappropriate access to patient information.

It is noted that the WCB determined that Dr. Haigh's file accesses did not have any negative impact on the individual's WCB claim decisions, and there was no indication to suggest the information was shared with anyone else. However, the fact that claim decisions were likely not influenced by Dr. Haigh's actions does not change the fact that he should not have accessed the files without authorization.

The Committee concluded that Dr. Haigh breached the expected standards of practice by:

1. Accessing information on injured workers from the WCB for whom he was not contracted to do assessments; and
2. Obtaining information from WCB files on injured workers with whom he had a contractual relationship on the part of the injured worker's employer, representing a conflict of interest specifically prohibited in his contract.

DISPOSITION

In accordance with clauses 99(5)(f) and 99(7) of the regulations under the *Medical Act*, the Committee determined that there was sufficient evidence that, if proven, would constitute professional misconduct that warrants a licensing sanction. Rather than refer the matter to a hearing, the Committee determined that the matters can be resolved with the consent of Dr. Haigh to the following:

1. Dr. Haigh is *reprimanded* for breaching the expected standards of practice in a manner that constitutes professional misconduct.
2. Dr. Haigh is required to contribute to the costs incurred by the College in the investigation and resolution of this matter.

Dr. Haigh agreed to this consensual reprimand.

The Committee believes that the disposition outlined above reflects its serious concerns with respect to Dr. Haigh's inappropriate access of patient files, contrary to expected standards of practice and contrary to his contractual relationship with the WCB.

Through the issuing of this reprimand, the Committee expects Dr. Haigh to gain a clearer understanding of the importance of the privacy rights of patients and his duty of confidentiality. Such rights and duties are not given proper consideration when a physician believes he can access patient information without authorization, even where he believes that no adverse consequences will occur or believes that it is in the best interest of the patients to do so.

Dr. Haigh must at all times be cognizant of the importance of the confidentiality of health information and take all appropriate steps to preserve it.

At the same time, the decision recognizes that there have been no identified concerns about Dr. Haigh's competence or his ability to provide appropriate care to his patients, and no prior findings of breaches of confidentiality.